

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Cloey Romans	Team: Squad #15	CCRB Case #: 202102148	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 03/21/2021 1:55 AM	Location of Incident: § 87(2)(b)	18 Mo. SOL 9/21/2022	Precinct: 73		
Date/Time CV Reported Fri, 03/26/2021 10:15 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 04/05/2021 11:26 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. CPT Omar Birchwood	00000	945512	PSA 3
2. SGT SA Frantz Chauvet	00864	952575	073 PCT
3. SGT Terrence Howard	03375	950599	073 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Peter Amorello	18567	954485	073 PCT
2. PO Bryan Lee	24709	955050	073 PCT
3. PO James Manginelli	06214	965301	073 PCT
4. PO Vernon Miller	24974	920611	073 PCT
5. PO Sean Kenny	08434	954997	073 PCT
6. LT Daniel Crisan	00000	928128	UPTU
7. PO Christopher Rodrigues	08102	957088	073 PCT
8. LT James Berk	00000	949358	IAB
9. PO Jesse Slavin	18421	968139	073 PCT
10. PO Scott Witter	07824	964840	073 PCT

Officer(s)	Allegation	Investigator Recommendation
A . SGT SA Frantz Chauvet	Abuse: Sergeant Frantz Chauvet entered § 87(2)(b) Brooklyn.	
B . SGT Terrence Howard	Abuse: Sergeant Terrence Howard entered § 87(2)(b) Brooklyn.	
C . SGT Terrence Howard	Abuse: Sergeant Terrence Howard searched § 87(2)(b) Brooklyn.	
D . CPT Omar Birchwood	Force: Captain Omar Birchwood used physical force against § 87(2)(b)	
E . CPT Omar Birchwood	Abuse: Captain Omar Birchwood entered § 87(2)(b) Brooklyn.	
F . SGT SA Frantz Chauvet	Force: Sergeant Frantz Chauvet used physical force against § 87(2)(b)	
G . SGT SA Frantz Chauvet	Force: Sergeant Frantz Chauvet used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
H . CPT Omar Birchwood	Force: Captain Omar Birchwood used physical force against § 87(2)(b)	
I . SGT SA Frantz Chauvet	Abuse: Sergeant Frantz Chauvet arrested § 87(2)(b) unlawfully.	

Case Summary

On March 26, 2021, § 87(2)(b) submitted the following complaint with IAB via telephone, generating log #§ 87(2)(b). On April 5, 2021, the CCRB received the complaint.

At approximately 1:56 a.m. on March 21, 2021, Sgt. Frantz Chauvet, Sgt. Terrence Howard, and Captain Omar Birchwood of the 73rd Precinct were dispatched to the vicinity of 219 MacDougal Street, Brooklyn, in response to a Shot Spotter notification and 911 call reporting fireworks. Upon arriving, the officers observed § 87(2)(b) § 87(2)(b) and § 87(2)(b) standing on the street outside of § 87(2)(b) and pursued § 87(2)(b) § 87(2)(b) and § 87(2)(b) into § 87(2)(b) and entered § 87(2)(b) (**Allegations A and B: Abuse of Authority – § 87(2)(g)**). Once inside, Sgt. Howard searched the apartment (**Allegation C: Abuse of Authority – § 87(2)(g)**). Captain Birchwood entered the building with two unidentified tenants and upon arriving at the front door of § 87(2)(b) pushed § 87(2)(b) out of the threshold (**Allegation D: Force – § 87(2)(g)**) and entered the apartment (**Allegation E: Abuse – § 87(2)(g)**). Once inside the apartment, Sgt. Chauvet pushed § 87(2)(b) into a couch (**Allegation F: Force – § 87(2)(g)**). After doing so, Sgt. Chauvet and Captain Birchwood forcibly removed § 87(2)(b) from the apartment (**Allegations G and H: Force – § 87(2)(g)**) where Captain Birchwood supervised § 87(2)(b) arrest for Disorderly Conduct (**Allegation I: Abuse of Authority – § 87(2)(g)**). § 87(2)(b) was removed to the 73rd Precinct Stationhouse. No other arrests or summonses were issued.

At the precinct, § 87(2)(b) was issued criminal summons #§ 87(2)(b) and released. No arrest report was prepared (Board Review 01, 02, and 03).

§ 87(2)(b) sought medical treatment by herself at § 87(2)(b) after the incident and reportedly was diagnosed with a sprained wrist, which was placed into a cast. § 87(2)(b) did not sign HIPAA forms, so the investigation was not able to obtain any medical records.

Twenty BWC videos were yielded and are linked in the case file as IAs #166-185 (Board Review 04 through 23). Cellphone video was obtained from § 87(2)(b) and is linked in the case file as IA #40 (Board Review 24). No other surveillance or video evidence was obtained during the investigation.

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant FRANTZ CHAUVET entered § 87(2)(b)

§ 87(2)(b) Brooklyn.

Allegation (B) Abuse of Authority: Sergeant TERENCE HOWARD entered § 87(2)(b)

§ 87(2)(b) Brooklyn.

Allegation (C) Abuse of Authority: Sergeant TERENCE HOWARD searched § 87(2)(b)

§ 87(2)(b) Brooklyn.

§ 87(2)(b) was interviewed on April 28, 2021. § 87(2)(b) was interviewed on July 16, 2021. § 87(2)(b) and § 87(2)(b) declined to provide statements on the advice of their attorneys. No other civilians or witnesses were identified. Sgt. Chauvet was interviewed on May 3, 2022. Sgt. Howard was interviewed on May 4, 2022. Captain Birchwood was interviewed on May 31, 2022.

It is undisputed that Sgt. Chauvet and Sgt. Howard entered § 87(2)(b) § 87(2)(b) while pursuing § 87(2)(b) and § 87(2)(b).

At approximately 1:55 a.m., § 87(2)(b) and two of his male cousins, who he declined to provide the names or contact information for, and § 87(2)(b) arrived at § 87(2)(b) home located at § 87(2)(b). The four men stood outside near the front steps of the building speaking to one another. § 87(2)(b) did not recall any fireworks or gunshots being heard before their arrival or while standing outside the building. Approximately ten minutes later, § 87(2)(b) observed multiple patrol vehicles drive down MacDougal Street in front of his apartment building. § 87(2)(b) did not know why these officers were there and they did not attempt to engage in contact with § 87(2)(b) or the other men at that time. § 87(2)(b) and the two cousins entered the apartment building and began walking upstairs to their apartment which is on the § 87(2)(b) floor. Shortly after, multiple officers entered the building. The officers did so by forcing open the main door, but § 87(2)(b) was unable to provide further details on how the door was forced open and whether he was present. The officers proceeded upstairs and then forced open the door to § 87(2)(b) apartment. § 87(2)(b) was unable to provide further details regarding how this was performed by officers. Almost immediately after § 87(2)(b) entered his apartment, Sgt. Howard and Sgt. Chauvet entered behind him. § 87(2)(b) believed the officers had forced open the door to gain entry but did not recall why he believed this happened. § 87(2)(b) did not recall if the door was closed or if any damage was caused to it during the entry. Once they were within the apartment, Sgt. Chauvet and Sgt. Howard immediately approached § 87(2)(b) and § 87(2)(b) and then began speaking with them. At various points during the incident, § 87(2)(b) lost sight of the officers within the apartment due to the numerous individuals inside. § 87(2)(b) believed at one point he observed Sgt. Howard enter the interior apartment hallway which leads to the bedrooms. § 87(2)(b) was unable to provide any further information beyond the fact that he believed Sgt. Howard was unmonitored in a section of the apartment beside the living room (Board Review 25).

§ 87(2)(b) was inside the apartment during the initial police contact and did not observe any event preceding the officer's entry. She denied knowing of any fireworks or gunshots on the incident date. § 87(2)(b) was in the bathroom of her apartment when Sgt. Howard and Sgt. Chauvet entered. She did not observe their entrance into the apartment but saw them standing in her living room once she exited the bathroom. She did not hear or see any actions preceding this. Upon observing the officers speaking to § 87(2)(b) in the living, she approached them. § 87(2)(b) did not see any officer enter an area of the apartment beyond the living room (Board Review 29).

Sgt. Chauvet, Sgt. Howard, and Captain Birchwood provided consistent testimony that they arrived at the incident location in response to a Shot Spotter alert. Sgt. Chauvet and Sgt. Howard did not recall if they had received information regarding a 911 call about fireworks in the vicinity, whereas Captain Birchwood stated that before arriving on the scene, he had received information regarding fireworks and the Shot Spotter in the same job. Captain Birchwood believed the Shot Spotter and fireworks to be related before arriving on the scene. All officers were in consensus that a Shot Spotter picks-up noises other than gunshots and that before they arrived on the scene, they did not have irrefutable knowledge that gunshots had been fired and they were aware the notification could have been triggered by a vehicle backfiring or fireworks. Upon arriving on the scene, together and in the same police vehicle, the officers observed § 87(2)(b) and § 87(2)(b) standing outside on the steps in front of § 87(2)(b). The officers then made a mutual determination to stop the men, though all the officers denied having a conversation with one another regarding the stop before exiting their vehicle. The officers denied recalling observing anything in any of the men's hands and denied observing any specific evidence which made them believe § 87(2)(b) or § 87(2)(b) were related to either the Shot Spotter or the fireworks prior to attempting to stop them. The officers exited their police vehicle and approached

the men, who immediately turned and ran into the apartment building. The officers denied recalling if the police vehicle turret lights were on, denied knowing if the sirens were on, and denied knowing if they made any verbal commands to § 87(2)(b) or § 87(2)(b) before pursuing them into the building after attempting to approach and stop them. The officers stated they entered both the main building door and the apartment door for § 87(2)(b) directly behind § 87(2)(b) and for this reason, both doors were unlocked and open. Sgt. Chauvet and Sgt. Howard made an entry for the sole purpose of questioning § 87(2)(b) and § 87(2)(b) regarding the Shot Spotter and fireworks, though neither officer had reason to suspect the men were involved in either of these incidents or any additional criminality. Captain Birchwood did not enter with Sgt. Chauvet and Sgt. Howard as the main building door had closed and locked him out after Sgt. Chauvet and Sgt. Howard entered through it. Captain Birchwood remained outside until two tenants that were leaving the building allowed him inside. Captain Birchwood walked to the § 87(2)(b) floor, where he saw Sgt. Howard and Sgt. Chauvet inside § 87(2)(b) and attempted to make entry at that time to assist the officers (Board Review 26, 27, and 28).

Body-worn Camera (BWC) videos illustrate the officers approaching the building and chasing § 87(2)(b) and § 87(2)(b) inside. The video does not capture the civilians' actions before running into the building and does not capture the officers making any verbal commands before entering § 87(2)(b). Sgt. Chauvet's BWC illustrates him in the rear seat of a police vehicle and arriving at the incident location. Sgt. Chauvet, Captain Birchwood, and Sgt. Howard exit the vehicle and walk towards § 87(2)(b) where there does not appear to be any other individual outside on the street or in front of the building. Upon arriving at the glass front door of the apartment building, an individual can be seen running up the stairs inside. Sgt. Chauvet enters directly behind him and follows him into § 87(2)(b). There is no audio captured during this portion of any video. Sgt. Howard's BWC is consistent with that of Sgt. Chauvet's, and no other video captures this portion of the incident. BWC then illustrates Sgt. Howard and Sgt. Chauvet entering the building directly behind § 87(2)(b) as they chase him up the stairs from outside. The officers enter § 87(2)(b) directly behind § 87(2)(b) and approach him in the living room, then begin speaking with him. There is no audio captured in the portion of BWC before the officers' entry and begins with § 87(2)(b) asking the officers why they are in the house (Board Review 08 and 09). Captain Birchwood's BWC captures him entering the building when two tenants hold the door open for him, then he approaches § 87(2)(b) and a struggle ensues before he enters the apartment (Board Review 13).

Cellphone video captured by § 87(2)(b) begins from within the apartment and does not capture any moments prior to the officer's entry into the apartment. The video illustrates her speaking with Sgt. Chauvet after he has entered the apartment and does not capture his or Sgt. Howard's entry. The video shows Sgt. Chauvet explaining that he followed § 87(2)(b) and § 87(2)(b) into the apartment because they ran from him (beginning at the 00:38 mark) (Board Review 24).

At 1:54 a.m., a 911 caller reports four to five male teenagers shooting fireworks at windows and cars. The address is reported as 96 Rockaway Boulevard, Brooklyn, and the caller provides their name and call back number. No additional pedigree information or details are reported by the caller (Board Review 48).

The event summary for the Shot Spotter (#§ 87(2)(b)) marks the alert at 1:55:04 a.m. at 219 MacDougal Street. The Shot Spotter recording was verified by an operator at 1:55:43 a.m. The operator was not Sgt. Chauvet, Sgt. Howard, or Captain Birchwood. The operator marked in the job description, "THREE ROUNDS REAR OF THE LOC." Further details of the alleged weapon discharge, such as caliber or details regarding the assailant, are not known or marked in the event

summary. At 2:05:47 a.m., the operator combines job #§ 87(2)(b) to #§ 87(2)(b) Job #§ 87(2)(b) is regarding a 911 call from § 87(2)(b) who calls to report that 4 or 5 male teenagers are aiming fireworks at the windows of houses, vehicles, and people in front of 219 Mac Dougal Street. § 87(2)(b) does not provide any further pedigree regarding the perpetrators and does not provide their race, height, or clothing. § 87(2)(b) does not specify the type of firework or its appearance. The 911 call was made at 1:54:26 a.m. and a call back number was provided by § 87(2)(b) though it was not utilized by the operator or dispatching officers (Board Review 30).

People v. Doll, 21 N.Y.3d 665 established that absent consent from the occupant and absent a search warrant, the police may only enter a private residence to address emergency situations. To do so, the situation must satisfy three requirements. First, the police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property. Second, the entry must not be primarily motivated by an intent to arrest or seize evidence. Third, there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched (Board Review 33).

People v McBride, 14 N.Y.3d 440 establishes that there are six factors to determine exigency: "(1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) whether the suspect is reasonably believed to be armed; (3) a clear showing of probable cause ... to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that the suspect will escape if not swiftly apprehended; and (6) the peaceful circumstances of the entry." McBride also establishes that police themselves cannot by their own conduct create an appearance of exigency (Board Review 34).

People v. Torres, 115 A.D.2d 93 details that where there is nothing to establish that a crime has been or is being committed, flight is an insufficient basis for seizure or for the limited detention that is involved in pursuit. Without additional indicia of criminality, flight does not justify the Hot Pursuit doctrine (Board Review 47).

United States v. Santana, 427 U.S. 38 defines "Hot Pursuit" as some sort of a chase that precedes a justifiable warrantless entry into a defendant's house. Hot pursuit occurs when an officer is in immediate or continuous pursuit of a suspect from the scene of a crime. The government must demonstrate an immediate or continuous pursuit of the suspect from the scene of the crime in order for the warrantless arrest to fall within the hot pursuit exception to the warrant requirement (Board Review 49).

Event Summaries for jobs #§ 87(2)(b) and #§ 87(2)(b) do not provide any pedigree or demographic information linking § 87(2)(b) or § 87(2)(b) to either the Shot Spotter or the fireworks call. There was no reason to believe that there was an emergency situation inside the apartment (Board Review 36).

There is no material evidence, civilian or officer testimony, or police documentation that asserts prior to the officers' entry there was an emergency at hand or the immediate need to protect life or property occurring at § 87(2)(b) § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Sgt. Howard's BWC videos do not capture the totality of his time on the scene and do show him entering any additional rooms of the apartment or conducting a search. Sgt. Howard has two BWC videos (Board Review 09 and 22), both of which illustrate him entering the living room of the apartment and exiting the building multiple times. There is a two-minute gap in the conclusion of Sgt. Howard's first BWC video and the beginning of his second BWC video.

While it is evident that Sgt. Howard entered the apartment, the totality of his time in § 87(2)(b) is not captured on BWC. § 87(2)(g) § 87(2)(b)

Allegation (D) Force: Captain OMAR BIRCHWOOD used physical force against § 87(2)(b)

Allegation (E) Abuse of Authority: Captain OMAR BIRCHWOOD entered § 87(2)(b) § 87(2)(b) Brooklyn.

It is undisputed that Captain Birchwood engaged in a physical struggle with § 87(2)(b) to enter § 87(2)(b)

After Sgt. Chauvet and Sgt. Howard had entered the apartment and were speaking with § 87(2)(b) § 87(2)(b) approached the front door and saw that approximately 10 more police officers were standing outside in the hallway. Captain Birchwood was standing directly in front of the door, in the hallway, and told her that he needed to come into the apartment because his co-workers were inside. Captain Birchwood then grabbed § 87(2)(b) by her right arm, twisted it, and pushed her approximately three feet until she was out of the doorway, and he then entered the apartment with five other officers. Captain Birchwood grabbing § 87(2)(b) arm resulted in a sprained right wrist which she later sought medical attention for at § 87(2)(b) (Board Review 29).

After approaching the closed door for § 87(2)(b) Captain Birchwood heard Sgt. Chauvet and Sgt. Howard's voice inside but did not recall what they were saying. Captain Birchwood proceeded to open the apartment door to see several civilians standing inside the apartment, directly in front of the door to prevent his entry. Captain Birchwood did not recall who the civilians were or how many there were, though § 87(2)(b) was one of them. Captain Birchwood asked the individuals several times to let him into the apartment and they denied his request, though Captain Birchwood did not recall how he phrased this request or specifically how the individuals replied. Captain Birchwood proceeded to place both his hands on § 87(2)(b) to move her out of the way but did not recall where he touched § 87(2)(b) or how he moved her out of the way. Captain Birchwood denied placing his hands on any other civilian during this time (Board Review 28).

Sgt. Howard and Sgt. Chauvet denied seeing Captain Birchwood touch § 87(2)(b) at any time and denied observing how he entered § 87(2)(b) (Board Review 26 and 27).

Captain Birchwood's Body-worn Camera (BWC) video illustrates him grabbing § 87(2)(b) arm and pushing her into the apartment while gripping her, then subsequently entering the unit after she is heard telling him not to (beginning at the 00:00:36 mark). The video shows Captain Birchwood approaching § 87(2)(b) where § 87(2)(b) can be seen standing in the threshold with the door ajar. § 87(2)(b) is speaking but there is no audio on this portion of the BWC

video. Captain Birchwood approaches her and says something inaudible, grabs her right arm with his left hand, then moves his hand to her right elbow, places his left hand on her right upper right back, and pushes her into the apartment. The audio begins at 00:00:59 and § 87(2)(b) can be heard yelling, “This my house. No.” Captain Birchwood ignores her request and enters the apartment after he has pushed her out of the doorway (Board Review 13).

Cellphone video captured by § 87(2)(b) does not capture Captain Birchwood pushing § 87(2)(b) or entering the apartment. The video begins after Captain Birchwood and the other officers are inside § 87(2)(b) apartment (Board Review 24).

People v. Doll, 21 N.Y.3d 665 establishes that absent consent from the occupant and absent a search warrant, the police may only enter a private residence to address emergency situations. To do so, the situation must satisfy three requirements. First, the police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property. Second, the entry must not be primarily motivated by an intent to arrest or seize evidence. Third, there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched (Board Review 33).

People v McBride, 14 N.Y.3d 440 establishes that police themselves cannot by their own conduct create an appearance of exigency (Board Review 34).

NYPD Patrol Guide Procedure 221-01 details that officers will use only the reasonable force necessary to gain control or custody of a subject. In all circumstances, any application or use of force must be reasonable under the circumstances. If the force used is unreasonable under the circumstances, it will be deemed excessive and in violation of Department policy. When appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force (Board Review 37).

It is irrefutable that Captain Birchwood grabbed § 87(2)(b) arm and wrist, then pushed her into her apartment. Before this, § 87(2)(b) had not been physically combative, and she was not a suspect being placed under arrest. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Captain Birchwood testified that his sole reason for entering § 87(2)(b) apartment was because Sgt. Chauvet and Sgt. Howard were already inside, and he needed to check the officer’s wellbeing. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (F) Force: Sergeant FRANTZ CHAUVET used physical force against § 87(2)(b)

§ 87(2)(b)

Allegation (G) Force: Sergeant FRANTZ CHAUVET used physical force against § 87(2)(b)

§ 87(2)(b)

Allegation (H) Force: Captain OMAR BIRCHWOOD used physical force against § 87(2)(b)

Allegation (I) Abuse of Authority: Sergeant FRANTZ CHAUVET arrested § 87(2)(b) unlawfully.

It is undisputed that Sgt. Chauvet pushed § 87(2)(b) into the couch after entering the apartment, then Sgt. Chauvet and Captain Birchwood forcibly removed § 87(2)(b) from the apartment and Sgt. Chauvet made the determination to arrest § 87(2)(b) for Disorderly Conduct.

§ 87(2)(b) and § 87(2)(b) provided consistent testimony that after Sgt. Chauvet and Sgt. Howard entered their apartment, Sgt. Chauvet and § 87(2)(b) got into a verbal dispute when § 87(2)(b) asked the officer why they had entered the apartment. § 87(2)(b) and § 87(2)(b) then engaged in a dispute with Captain Birchwood when he attempted to enter the apartment and neither § 87(2)(b) nor § 87(2)(b) observed Sgt. Chauvet push § 87(2)(b) into the couch. When § 87(2)(b) and § 87(2)(b) next observed § 87(2)(b) he was seated and speaking with Sgt. Chauvet who was standing above him. Sgt. Chauvet exited the apartment to stand in the hallway, followed by Sgt. Howard and Captain Birchwood. § 87(2)(b) approached the hallway and upon doing so, his identification fell out of his pocket and when he reached down to pick it up, several officers grabbed ahold of § 87(2)(b) and dragged him out of the apartment and down the building step, ultimately removing him from the scene. Neither § 87(2)(b) nor § 87(2)(b) was able to provide any further information on the officers who engaged in the struggle or details of how the struggle ensued, and neither knew what § 87(2)(b) was arrested or removed for (Board Review 25 and 29).

Immediately after Sgt. Chauvet entered the apartment behind § 87(2)(b) turned around to face Sgt. Chauvet and § 87(2)(b) took both of his hands, open-palmed, placed them onto Sgt. Chauvet's chest and attempted to push him out of the apartment while saying, "Get out." Sgt. Chauvet then placed both his hands, open-palmed and flat on § 87(2)(b) chest, then pushed him approximately four to five feet and pushed § 87(2)(b) into a couch, forcing him into a seated position with Sgt. Chauvet directly in front and above him. Sgt. Chauvet took this action to gain control of § 87(2)(b) and question him. Once on the couch, Sgt. Chauvet observed § 87(2)(b) was holding fireworks and requested his identification to issue him a summons for the firework possession. § 87(2)(b) refused to provide his identification and became irate. § 87(2)(b) assisted in obtaining § 87(2)(b) identification from him, then gave it to Sgt. Chauvet who left the apartment to speak with Captain Birchwood in the apartment. Sgt. Howard and Captain Birchwood denied seeing Sgt. Chauvet push § 87(2)(b) into the couch. Captain Birchwood and Sgt. Chauvet provided consistent testimony that while standing in the hallway outside of the apartment, they were approached by § 87(2)(b). Sgt. Chauvet observed § 87(2)(b) begin jumping in and out of the hallway while yelling. Sgt. Chauvet denied recalling what § 87(2)(b) was saying but believed he was using the word "dickhead" when referring to the officers. Sgt. Chauvet approximated that § 87(2)(b) continued jumping for seven or eight minutes until he finally jumped within a foot of Captain Birchwood, at which point Sgt. Chauvet made the determination to arrest § 87(2)(b) for Disorderly Conduct because he believed "he was going to jump on the Captain." Sgt. Chauvet denied that § 87(2)(b) had committed any crime before this moment, beyond the firework possession. Sgt. Chauvet approached § 87(2)(b) and initiated a takedown to handcuff § 87(2)(b). Sgt. Chauvet denied recalling the specifics of the takedown but stated it was necessary because § 87(2)(b) had been moving around erratically. Sgt. Chauvet denied that any other officer was involved in the takedown. Captain Birchwood recalled the struggle to handcuff § 87(2)(b) and described it as several of the civilians, who Captain Birchwood could not recall the identity of, pulling § 87(2)(b) back inside the apartment while Captain Birchwood and other officers attempted to pull § 87(2)(b) outside the apartment to

arrest him. Captain Birchwood did not recall the identity of the other officers involved in the struggle and did not recall if Sgt. Howard or Sgt. Chauvet were the officers pulling § 87(2)(b) into the hallway. § 87(2)(b) himself was not resisting but was being pulled by the civilians in the apartment and officers outside of the apartment. § 87(2)(b) was ultimately pulled into the hallway when the civilians let go of him, causing § 87(2)(b) to fall face down onto the floor of the hallway. An officer handcuffed § 87(2)(b) and removed him to 73rd Precinct Stationhouse. Captain Birchwood did not recall which officers handcuffed § 87(2)(b) and believed that § 87(2)(b) had been arrested for the possession of the fireworks and denied knowing if he had been arrested for any other violations. Captain Birchwood approved the fireworks arrest and did not discuss with any officers regarding arresting § 87(2)(b) for Disorderly Conduct and denied knowing if § 87(2)(b) was ultimately arrested for Disorderly Conduct. Sgt. Howard did not observe the struggle with § 87(2)(b) arrest and did not have knowledge about § 87(2)(b) being arrested for Disorderly Conduct (Board Review 26, 27, and 28).

Body-worn Camera (BWC) video captures Sgt. Chauvet grabbing § 87(2)(b) shirt and pushing § 87(2)(b) into a couch, engaging in a verbal dispute, before Sgt. Chauvet returns to the exterior hallway and then engages in a physical struggle with § 87(2)(b) and Captain Birchwood to remove § 87(2)(b) from the hallway (beginning at the 00:01:03 mark) (Board Review 08). After pushing § 87(2)(b) into the couch, Sgt. Chauvet's BWC illustrates him immediately asking for § 87(2)(b) identification and then telling him he will be going to jail without specifying for what. Sgt. Chauvet and § 87(2)(b) engage in a verbal dispute (beginning at the 00:02:03 mark). § 87(2)(b) asks Sgt. Chauvet what he will be arrested for, and Sgt. Chauvet says, "OGA. Not listening" (beginning at the 00:07:02 mark). Sgt. Chauvet moves into the hallway to speak with Captain Birchwood and § 87(2)(b) steps into the hallway and hits the floor with his hand (beginning at the 00:13:23 mark). Sgt. Chauvet and Captain Birchwood approach § 87(2)(b). Sgt. Chauvet says they are going to arrest § 87(2)(b) and Captain Birchwood attempts to grab § 87(2)(b) arm. § 87(2)(b) steps back into the apartment and Captain Birchwood grabs § 87(2)(b) and begins pulling him out of the apartment while § 87(2)(b) and § 87(2)(b) attempt to pull § 87(2)(b) back inside (beginning at the 00:14:20 mark). Sgt. Chauvet grabs an indistinguishable part of § 87(2)(b) body and while Captain Birchwood pulls on § 87(2)(b) arm, the officers pull § 87(2)(b) out into the hallway, where § 87(2)(b) falls face down on the ground. § 87(2)(b) is handcuffed without further incident and removed to the stationhouse (Board Review 08 and 13).

The cellphone video recorded by § 87(2)(b) does not capture Sgt. Chauvet pushing § 87(2)(b) into the couch, though it does illustrate Captain Birchwood and Sgt. Chauvet pulling § 87(2)(b) out of the apartment (beginning at the 00:05:05 mark). The video captures § 87(2)(b) standing in the threshold of her apartment while Captain Birchwood and Sgt. Chauvet are in the hallway, speaking with § 87(2)(b) who is between § 87(2)(b) and the officers. Captain Birchwood asks for § 87(2)(b) identification to issue him a summons and when § 87(2)(b) declines, Captain Birchwood and Sgt. Chauvet grab § 87(2)(b) and pull him out of the apartment (Board Review 24).

A Threat Resistance and Injury Worksheet (TRI) was prepared by Sgt. Chauvet for the struggle with § 87(2)(b). Sgt. Chauvet's narrative within the TRI states that he "wrestled/grappled" with § 87(2)(b) to gain compliance and ultimately forcibly brought § 87(2)(b) to the ground when he became "erratic" (Board Review 38).

NYPD Patrol Guide Procedure 221-01 details that officers will use only the reasonable force necessary to gain control or custody of a subject. In all circumstances, any application or use of force must be reasonable under the circumstances. If the force used is unreasonable under the

circumstances, it will be deemed excessive and in violation of Department policy. When appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force (Board Review 37).

It is undisputed that after entering the apartment, Sgt. Chauvet pushed § 87(2)(b) into the couch. As the Patrol Guide dictates, the level of force used must be proportional to the circumstances. § 87(2)(b) was not yet suspected of a crime, did not have a known violent history, and did not illustrate a threat or harm to Sgt. Chauvet or any other member of service. § 87(2)(b) was standing in the threshold to prevent an unlawful entry into his apartment, with no active resistance.

§ 87(2)(g)

It is undisputed that Sgt. Chauvet and Captain Birchwood pulled § 87(2)(b) out of the apartment and brought him to the ground in order to handcuff him. The nature and severity of the crime for which § 87(2)(b) was being arrested, Disorderly Conduct stemming from his jumping in and out of the apartment, § 87(2)(g)

As previously referenced, § 87(2)(b) was not known to have a violent history and did not demonstrate aggression. Officer and civilian testimony, along with BWC video, corroborate that § 87(2)(b) was not actively resisting arrest and there was no threat or harm to the officers or § 87(2)(b) himself. § 87(2)(g)

NY Penal Law § 240.20 outlines the parameters for Disorderly Conduct, defining a person as guilty if they intentionally cause public inconvenience, annoyance, or alarm, or recklessly creating a risk in a public place or to provoke public disorder. The penal law definition of “Public place” means a place to which the public or a substantial group of persons has access, and includes, but is not limited to, highways, transportation facilities, schools, places of amusement, parks, playgrounds, community centers, and hallways, lobbies and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence (Board Review 39).

People v. Griswald, 170 Misc. 2d 38 establishes the precedent that a private residence does not fall within the definition of a “public place” (Board Review 40).

Sgt. Chauvet determined to arrest § 87(2)(b) singularly because he feared § 87(2)(b) would come into physical contact with Captain Birchwood. BWC video refutes this as the preceding series of events leading up to § 87(2)(b) arrest. § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 42).

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 43).
- Sgt. Frantz Chauvet has been a member of service for nine years and has been a subject of two CCRB complaints and six allegations, none of which were substantiated. § 87(2)(g)
- Sgt. Terrence Howard has been a member of service for ten years and has been the subject of 11 CCRB complaints and 22 allegations, of which three were substantiated:
 - #201304352 involved a substantiated allegation of Abuse – Frisk against Sgt. Howard. The Board recommended Command Discipline and the NYPD imposed Instruction.
 - #201310961 involved substantiated allegations of Abuse – Frisk and Abuse – Strip-searched against Sgt. Howard. The Board recommended Formalized Training and the NYPD imposed Instruction. § 87(2)(g)
- Captain Omar Birchwood has been a member of service for 14 years and has been the subject in ten CCRB complaints and 29 allegations, of which three were substantiated:
 - #201700136 involved substantiated allegations of Abuse – Premises entered and/or searched against Captain Birchwood. The Board recommended Charges and APU determined Captain Birchwood to be Not Guilty.
 - #201802977 involved two substantiated allegations of Discourtesy – Word against Captain Birchwood. The Board recommended Command Discipline – A and the NYPD imposed Command Discipline – A. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming personal injuries, damages, and mental anguish. § 87(2)(b) is seeking \$1,000,000 as redress (Board Review 43). There is no 50H hearing scheduled.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming personal, physical, and emotional injuries. § 87(2)(b) is seeking \$800,000 as redress (Board Review 43). There is no 50H hearing scheduled.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 15

Investigator:	Cloey Romans	Inv. Cloey Romans	7/11/2022
	Signature	Print Title & Name	Date
Squad Leader:	Simon Wang	IM Simon Wang	07/01/22
	Signature	Print Title & Name	Date

Reviewer: _____
Signature Print Title & Name Date